



Matthew Rodriguez
Secretary for
Environmental Protection

FILE

Air Resources Board

Mary D. Nichols, Chairman
9480 Telstar Avenue, Suite 4
El Monte, California 91731 • www.arb.ca.gov



Edmund G. Brown Jr.
Governor

EPES-2013-005

January 10, 2013

Mr. Trevor Johnson
Bully Dog Technologies
2839 Highway 89
American Falls, ID 83201

Dear Mr. Johnson,

This letter is to inform you that the Air Resources Board's (ARB) Enforcement Division has been requested by ARB's Mobile Source Operations Division (MSOD) to investigate Bully Dog Technologies (Bully Dog) for potential violations related to illegal sales of non-compliant aftermarket parts in California pursuant to section 27156 of the Vehicle Code, and failure to recall aftermarket parts that are no longer covered by ARB's Products in Progress (PIP) list. Specifically, the two devices in question are Bully Dog's Performance Management Tool and Triple Dog GT for various diesel powered vehicle (see attached list).

The PIP list had allowed diesel aftermarket parts, for which manufacturers had pending exemption applications with ARB, to be sold legally in California and pass applicable smog inspections without exemption Executive Orders until December 31, 2011. After that date, those applications that had not received valid exemptions in the interim required that the subject parts be recalled by the manufacturer; in this case, Bully Dog had received just one such Executive Order. Two other ARB letters (Reference Nos. A-2012-096 and F-2012-50) sent on April 16, 2012, and December 18, 2012, respectively, explicitly brought these matters to your company's attention as well, but to date, very few proactive actions have been taken by Bully Dog Technologies to remedy the issues described therein, particularly in regards to obtaining additional exemptions for the remainder of your expired parts on the PIP list and finalizing your proposed recall plan with ARB's Field Operations Warranty Section. As such, reasonable grounds exist to assume that some or all of the aforementioned Bully Dog parts are continuing to be sold or offered for sale illegally in California, in addition to those parts already installed and must now be removed.

Therefore, the ARB hereby requests that Bully Dog **immediately cease and desist** the sale and/or offering for sale of all Performance Management Tool and Triple Dog GT devices for which valid exemption Executive Orders have not been issued, including those on the expired PIP list. Furthermore, please provide copies of all receipts and/or paid invoices of all California sales (direct, wholesale, distributor, etc.) of these devices since January 1, 2010.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

Violation of section 27156 of the Vehicle Code constitutes an unlawful business practice within the meaning of California Business and Professions Code Section 17200 (attached). In addition, Business and Professions Code Section 17500 (attached) prohibits untrue or misleading advertising or making any untrue or misleading statements. Accordingly, the seller needs to exercise proper care in its advertising and sales to California consumers.

The California Health and Safety Code Section 43016 declares that: "Any person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per vehicle, portable fuel container, spout, engine, or other unit subject to regulation under this part, as these terms are defined in this division or state board regulations. Any penalty collected pursuant to this section shall be payable to the State Treasurer for deposit in the Air Pollution Control Fund."

You must acknowledge receipt of this letter and submit to ARB, no later than February 1, 2013, all steps taken by Bully Dog to ensure that all illegal Performance Management Tool and Triple Dog GT devices are not being advertised, offered, or sold in California, and have also been removed from California vehicles so equipped. Otherwise, this matter will be referred to our attorneys with the instruction to initiate legal proceedings as necessary. Please be advised that any other violations that may be discovered as a result will also be subject to the same liabilities mentioned above.

Senate Bill 1402 requires the ARB to provide information on the basis for the penalties it seeks (see Health & Safety Code section 39619.7). This information includes the manner in which the penalty amount was determined, including a per unit or per vehicle penalty; the provision of law the penalty is being assessed under and why that provision is the most appropriate for that violation; whether the penalty is being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so, a quantification of excess emissions, if practicable to do so. This information can be found in the "SB 1402 Statement" (attached).

Your prompt attention to this matter is required. If you have any questions regarding this letter, you may contact Mr. Dean Hermano, Staff Air Pollution Specialist, at (626) 459-4487 or at dhermano@arb.ca.gov.

Sincerely,



Gregory H. Binder, Chief
Vehicle, Parts, and Consumer Products
Enforcement Branch

Attachments (3)

Attachment

Product Name	Make	Engine	Model Year
Performance Management Tool	Ford	6.0L Power Stroke	1999-2010
Performance Management Tool	Ford	6.4L Power Stroke	2008-2010
Performance Management Tool	Ford	7.3L Power Stroke	1999-2003
Performance Management Tool	Chrysler	5.9L Cummins	2003-2009
Performance Management Tool	GM	6.6L Duramax	2001-2010
Triple Dog GT	Ford	6.0L Power Stroke	1999-2010
Triple Dog GT	Ford	6.4L Power Stroke	2008-2010
Triple Dog GT	Ford	7.3L Power Stroke	1999-2003
Triple Dog GT	Chrysler	5.9L Cummins	2003-2009
Triple Dog GT	GM	6.6L Duramax	2001-2010

17200. Business and Professions Code

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

17500. Business and Professions Code

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

On-Road Aftermarket Parts

SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, stats of 2010) requires the ARB to provide information on the basis for the penalties it seeks (see Health and Safety Code section 39619.7). This letter or notice of violation includes this information, which is also summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. We consider all relevant circumstances in determining penalties, including the eight factors specified in Health and Safety Code section 43024. The maximum per unit penalty in this case is a \$500 per unit strict liability violation. We are seeking a total penalty from you in the amount of \$ XXX for illegal units for a per unit penalty of \$XXX. This amount may be reduced based on information we acquire. We encourage you to bring any relevant information to our attention.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is section 43016 because you [advertised, installed, sold, and/or offered for sale] a part, device, or mechanism intended for use with, or as part of a required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system and that has not been exempted by the Air Resources Board, in violation of Vehicle Code sections 27156 and title 13, California Code of Regulations section 2222.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do not prohibit emissions above a specified level. However, since the parts/devices/units involved in this case are illegal for use, sale, or offer for sale in California, all of the emissions attributable to them are illegal and excess as well. In most aftermarket part cases, it is not practicable to calculate these emissions because the information necessary to do this is not available.